

Exhibit 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SAMUEL KATZ, an individual, on)
his own behalf and on behalf of)
all others similarly situated,)
) No. 1:18-cv-10506-ADB
Plaintiff)
)
vs.)
)
Liberty Power Corp., LLC, et)
al.,)
Defendants.)
)

BEFORE THE HONORABLE DONALD L. CABELL
UNITED STATES MAGISTRATE JUDGE
MOTION HEARING

John Joseph Moakley United States Courthouse
One Courthouse Way
Boston, Massachusetts 02210

March 24, 2021
2:00 p.m.

Kristin M. Kelley, RPR, CRR
Official Court Reporter
John Joseph Moakley United States Courthouse
One Courthouse Way, Room 3209
Boston, Massachusetts 02210
E-mail: kmob929@gmail.com

Mechanical Steno - Computer-Aided Transcript

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1 P R O C E E D I N G S

2 THE CLERK: This is the case of Katz versus Liberty
3 Power Corporation, LLC. Civil Action No. 1810056 will now be
4 heard before this court.

5 Would counsel please introduce themselves for the
6 record.

7 MR. PRESTON: Hello. My name is Ethan Preston. I
8 represent the plaintiffs.

9 THE COURT: Good afternoon.

02:01 10 MS. PARASMO: Good afternoon. Grace Parasmo on behalf
11 of plaintiffs.

12 THE COURT: Good afternoon.

13 MS. COCOZZA: Good afternoon. Nicole Cocozza on
14 behalf of the defendants.

15 THE COURT: Good afternoon.

16 MR. BRUNDAGE: Good afternoon. Jeffrey Brundage on
17 behalf of the defendants.

18 THE COURT: Good afternoon to you as well.

19 MR. GASTNER: Good afternoon. Robert Gastner on
02:01 20 behalf of the defendants.

21 THE COURT: Good afternoon to you.

22 So this hearing is actually in connection with matters
23 we originally took up at the last hearing and then since then
24 there have been some more filings. My hope is to resolve
25 everything that's pending. We kind of talked back and forth

1 I say this to both parties. It doesn't seem to me that the
2 parties have ever represented that we have conferred with
3 respect to this aspect of the order and we have reached an
4 agreement as to what exactly should be produced and what
5 shouldn't be produced. If I'm wrong, tell me. Otherwise,
6 Mr. Brundage, I think the onus is on you to say here's the
7 discovery this is what's consistent with Judge Burroughs' order
8 that plaintiffs are entitled to. They can say we'll start with
9 that, work with that or we don't think that's enough. If that
03:07 10 hasn't happened yet, that needs to happen ASAP.

11 MR. BRUNDAGE: You are not incorrect about what you
12 said.

13 THE COURT: So how do you want to proceed then? It
14 seems to me that before this deposition can take place, we
15 might need to ensure that you've provided some paper or
16 narrative in an interrogatory. What do we need to do in that
17 regard?

18 MR. BRUNDAGE: As we said in our papers opposing the
19 motion for compelling financial discovery, the parties need to
03:07 20 get on the phone and hash it out.

21 THE COURT: I don't mean to interrupt but this is
22 frustrating. That was months ago. That was several months
23 ago. Where we are right now is exactly what Judge Burroughs
24 was hoping to avoid by placing it back in the parties' hands.

25 Here is a practical question to the plaintiffs, I

1 guess. To the extent you got these topics here -- topic three,
2 do you think you could still benefit first from receiving some
3 discovery that relates to, and I don't have Judge Burroughs'
4 order in front of me, but some evidence or some discovery to
5 allow you to make an assessment of the bottom line performance
6 of the company?

7 If you say, thank you, but we think we've got enough,
8 then I say maybe this a nonissue and let's go ahead and have
9 this deposition take place. If you say, no, we still don't
03:09 10 think we've gotten enough to make that assessment, you guys
11 have got to go back and confer, we're not going to be able to
12 solve that right now, I think what she was sort of saying was
13 on the plaintiff's request, you were looking for monthly
14 statements, and that struck her, and strikes me as well, that
15 that's over the top. Maybe it's every six months. Maybe we
16 take snapshots every quarter. We do that for a period of three
17 or four years. Then, for those snapshots, what type of
18 information is in those snapshots?

19 That's the conversation you guys have got to have. If
03:09 20 you haven't had it yet and you think a deposition of a 30(b)(6)
21 designee might get to a point where they are being asked
22 questions that implicate the company's performance, I guess
23 that's my question. Do you guy -- Mr. Brundage says yes. Do
24 the plaintiffs agree you still need to work this part out?

25 MR. PRESTON: Certainly, the plaintiffs would benefit

1 from additional financial discovery, but I want to frame that
2 issue, your Honor. There was a court order requesting the
3 defendants to produce documents in June 2020, including
4 financial documents, which everybody agrees should be produced.
5 We found out in December that Mr. Hernandez, who owns the
6 company, makes funding requests to the finance people, the
7 shell and BTM. Those are communications that would be
8 responsive. We don't have those communications.

9 So after we filed this motion, we learned that
03:11 10 defendants never searched Mr. Hernandez's e-mail, never
11 searched his documents. So we're now in a position where now
12 nine months after the Court's order there has been never a
13 single search of the key person in this litigation, the key
14 witness who owns the defendant's companies, not just for
15 financials but for anything.

16 THE COURT: Hang on. You're starting to merge issues
17 again. That may be a concern. I'm focusing on the financials.
18 That part of Judge Burroughs' order, and I'm trying to find it
19 here -- she said the Court will not order the production. All
03:12 20 documents to determine defendants' net worth, including monthly
21 statements for all depository accounts, instead the parties are
22 ordered to meet and confer so that defendants may provide an
23 honest and accurate representation of their current net worth
24 in the least intrusive means available, with the goal of
25 determining the plausibility of punitive and class action

1 So what I would say is let's keep this focused on
2 something that may actually be an issue. If you have you are
3 in possession of something you should not be in possession of,
4 then it's crystallized, then it's an issue, and then I think
5 it's fair to ask have you searched for. If not, you should do
6 so. You were motioning with your hand. I think you want to
7 answer that.

8 MR. PRESTON: Sure, your Honor. So this is something
9 that got dragged into the reply brief for financial discovery.
03:59 10 It's ECF 271-1. That's my declaration. Then there's
11 paragraphs four through 8. Lays out very simply, I think,
12 there are financial discovery that the Court ordered in June
13 that we don't have and that should have been produced.

14 THE COURT: Here's how I'll deal with this.
15 Mr. Brundage, I'll order the defendants to go back and look to
16 see whether there has been a search for responsive documents
17 maintained by Mr. Hernandez. It's kind of a two part, in a
18 demand that says give me everything that this person wrote in
19 and of itself is appropriate. If you are requesting discovery
04:00 20 that's pertinent and you haven't gotten everything, and
21 reasonable people can wonder or can infer that that's because
22 there's an issue that hasn't been searched, the solution is to
23 search that area.

24 Mr. Brundage, you have the declaration of Mr. Preston.
25 You know where his concerns lie. Obviously, Mr. Hernandez is a

1 player, a majority player, and he's important in the context of
2 this case. It seems to me to be utterly commonsensical that
3 any searches for responsive documents should include documents
4 that are maintained by Mr. Hernandez.

5 I will leave it at that and simply direct the
6 defendants to make every effort to ensure that searches have
7 included documents in his possession as well as everywhere else
8 you have looked.

9 MR. BRUNDAGE: Yes, your Honor.

04:01 10 THE COURT: I would order that that search take place
11 immediately if it has not yet taken. I'm not making a finding
12 whether it has happened or not. I'm making directive that it
13 happen immediately and any nonprivileged information be
14 produced.

15 With that, it's 4:02. We're 2 minutes over. I think
16 that's a good place to stop. I will end on this note, offering
17 our services and encouraging the parties to call us if you do
18 this and we need a telephone call. It's not reported. We
19 don't adjudicate. We roll up our sleeves and talk the issue
04:02 20 through. We have a pretty good track record in helping to
21 reduce the paper problem with the Court by having those sorts
22 of calls.

23 All right? With that, everybody stay safe. We'll be
24 in recess.

25 (Whereupon, the proceedings concluded at 4:03 p.m.)

C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS)

I, Kristin M. Kelley, certify that the foregoing is a
correct transcript from the record of proceedings taken
March 24, 2021 in the above-entitled matter to the best of my
skill and ability.

/s/ Kristin M. Kelley

March 29, 2021

Kristin M. Kelley, RPR, CRR
Official Court Reporter

Date